

WETLANDS COUNCIL

MINUTES

October 10, 2006

The Wetlands Council met on Tuesday, October 10, 2006 at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

Attendees: Brian K. Fowler, Chairman, Camilla Lockwood, Paul W. Goodwin, Thomas G. Chrisenton, Lawrence E. Morse, John S. Cobb, William M. Dannehy, Thomas Sloan, Seth Prescott, Jack Ruderman, Dan Lynch, and Bill Hauser

The meeting was called to order by Chairman Brian K. Fowler at 9:00 a.m.

Mary Ann Tilton introduced the new Council Clerk, Carolyn Guerdet.

Change to agenda: A request for Continuance of the Hearing scheduled for today was received so there will be no hearing today.

1. Status of Appeals

Michael Sclafani, Appeals Clerk, distributed an Appeals Status Report and reviewed the report with the Council members.

- Docket No. 04-21 WtC – Lake Shore Realty Trust: WB #2001-01294
Pre-hearing conference scheduled for November 20, 2006 at 9:00 a.m.
No action was needed or taken by the Council
- Docket No. 05-04 WtC – Philip and Georgette Smith: WB #2000-00914
On September 12, 2006, an Appeal Re-Hearing was held. The council voted 6-4 to grant the Appeal. The written Decision & Order is being worked on and has not yet been issued. No action was needed or taken by the Council.
- Docket No. 05-12 WtC – Town of Barrington: WB #2004-02817
The Council's Decision in this case was appealed to Strafford Superior Court. On September 26, 2006 the Court issued a decision which upheld the Council's decision. No action was needed or taken by the Council.
- Docket No. 05-24 WtC – Evelyn, Geno and Fransesca Marconi: WB #2004-02046
On October 6, 2006 DES filed an Assented-to-Motion to Continue the Appeal Hearing until further notice. Council grants Assented-to Motion to Continue the Appeal Hearing until further notice on October 9, 2006. The Appeal hearing scheduled for today, October 10, 2006, was cancelled. Likelihood these issues will be settled and there will be no need for permit. No action was needed or taken by the Council.

- Docket No. 06-01 WtC Sumac Corp. and Grey Rocks Land Trust: WB #2005-00558
On September 19, 2006 Appellant filed a second Motion for Reconsideration was filed. This is not an option and on October 5, 2006 the presiding Officer issued a letter to the Appellant relative to the September 19, 2006 Second Motion for Reconsideration. No action was needed by the Council as the Appeal is closed.
- Docket No. 06-02 WtC – Bodanza, et. Al.: WB #2002-02483
On September 5, 2006 a written Decision & Order to grant the Appeal issued. It as decided the Bureau needed to issue the correct decision, which has been done. That decision has now been appealed. This is now closed and no action is needed by the Council.
- Docket No. 06-03 WtC – Donald and Mary Larson: WB #2005-02387
Pre-hearing Conference scheduled for October 30, 2006 at 10:30 a.m. No action was needed or taken by the Council.
- Docket No. 06-05 WtC – Joseph Winn/Winn Family Trust: WB #2005-02562
On September 20, 2006 the Appellant filed an Assented-to Motion to Remand.

Councilor Goodwin recused himself from discussion and vote on this appeal.

Chairman Fowler felt it would more properly preserve the Appellant's rights if a stay was put on this instead of granting a Motion for Remand.

Councilor Morse made a motion to deny appellant's Motion to Remand and to impose a stay to allow the parties the opportunity to reach a settlement. Councilor Cobb seconded the motion and it was unanimously voted.

- Docket No. 06-06 WtC – West Alton Marina: WB #2005-00049
Pre-hearing conference is scheduled for October 30, 2006 at 9:00 a.m. No action was needed or taken by the Council.
- Docket No. 06-09 WtC – Christopher and Christine Collins: WB #2005-02587
DES filed Certified Record with the Council on September 29, 2006. Pre-hearing conference is scheduled for November 6, 2006 at 9:00 a.m. No action was needed or taken by the Council.
- Docket No. 06-10 WtC – Ralph and Virginian Sanborn: WB #2006-00325
On August 11, 2006 Applicant, Glenn T. Saba, filed an Appearance. Also Applicant files a Reply and Motion to Summarily Dismiss. Because some councilors had not had time to read and review the Appeal and the Motion to Dismiss, the Council voted to table acceptance of this appeal until the next meeting.

Councilor Morse made a motion to remove this from the table so that it was open for discussion. Councilor Goodwin seconded the motion and it was unanimously voted.

Councilor Chrisenton waived the right to start .

Councilor Morse made a motion to deny the motion to Summarily Dismiss. Seconded by Councilor Prescott and it was unanimously voted.

Councilor Morse made a motion to accept this Appeal. Councilor Prescott seconded the motion and it was unanimously voted.

- Docket No. 06-11 WtC – Dennis Proulx: WB # 2006-00769
On September 12, 2006 the Council voted to accept the Appeal. The Appeal acceptance letter was distributed on September 14th with the Certified Record due on or before September 29, 2006. The pre-hearing conference is scheduled for November 6, 2006. No action was needed or taken by the Council.
- Docket No. 06-12 WtC – Bodanza et al.: WB #2002-02483
This is a new Notice of Appeal, received on September 11th, timely filed by Hand Delivery on the 28th day. Also on September 11, 2006 Attorney Bodanza files an Appearance on behalf of the Appellants. On September 28th a receipt of appeal was distributed.

Councilor Goodwin recused himself from discussion and vote on this appeal, 06-12 WtC .

Councilor Chrisenton made a motion to accept this Appeal. Councilor Lockwood seconded the motion and it was unanimously voted.

- Docket No. 06-14 WtC – Scott DeSantis: WB #2004-02635
This is a new Appeal of an August 21st decision on reconsideration. It is a timely filed appeal and was filed by hand on the 30th day. On September 29th a receipt of appeal letter was distributed. The Appellant requested that the Council stay this appeal on October 6, 2006. They are asking for 60 day Stay.

Councilor Goodwin recused himself from discussion and vote on this appeal, 06-14 WtC.

Councilor Chrisenton made a motion to Table this Appeal. Councilor Morse seconded the motion and it was unanimously voted.

2. Old Business

Chairman Fowler discussed and offered a report on the status of the Legislative Budget Assistant's in-progress audit (see Attachment A).

The meeting was recessed at approximately 10:00 a.m. for an attorney/client meeting between the council and Attorney Ann Edwards.

The meeting was reconvened at approximately 12:15 p.m.

3. Interim in lieu fee rule discussion

Lori Summer circulated a draft of the proposed in lieu fee program interim rule. She reported on 2 meetings she had with the sub-committee. It is felt that just the rules that are involved with in the in lieu fee program should go forward as interim rules. The interim rules will implement the program. Formal rule making to be sometime in December which will cover other changes necessary to bring together for formal rule making. The current draft is just the inland fee program for adoption. Fiscal impact statement to be submitted this week, on Thursday. Councilor Morse clarified process. Interim rules need to be in place 90 days after the adoption and enactment of the law, which was August 18th. Interim rules must be in place by November 18th. These are only good for an additional 120 days. Must then go through formal rule making process context. Will go through public hearings along with other changes.

Councilor Morse made a motion to endorse the interim rules as interim rules.

Councilor Goodwin seconded the motion and it was unanimously voted.

4. Wetlands Bureau Update

Mary Ann Tilton, Wetlands Bureau presented an update on bureau activities.

Staffing

Currently interviewing support staff position, Water Supply section. Wetlands Bureau is in the process of hiring Tom Gilford, PT Shoreland Waiver position, 29 Hr. per week. Collis Adams to return part-time on October 23rd. Surgery went well and he's excited to come back.

Stream Work Group

Stream work group began meeting, led by Fish & Game, to start developing NH Standards for Stream Crossings. Bureau will be looking to setting up a rule making work group as part of the manual to draft rules for adoption in manual. Kevin Nyhan, NH DOT, Steve Couture, Councilors Morse and Chrisenton have offered to work on this group. Please let Mary Ann know if anyone else you know interested in working in this group. Email received on what Army Corp expectation is for timeline for rule making in regards to this.

EPA Grant notice

Bureau has been notified we are receiving a grant from EPA for \$70,000 to hire staff to work with volunteers to locate permitted culvert/stream crossings in the Assuelot River Watershed. Will be studying appropriateness to our decision making as it relates to those permitted stream crossings. There is a years worth of data already to use as a baseline. Hoping to identify any opportunities for restoration and potentially use this as a model for watershed management as far as the in lieu fee mitigation process.

She asked for clarification on one of the council's rules in regards to the Bureau's preparation of the record. Bureau is to prepare the record. They currently maintain permitting file records and enforcement records at the request of the legal unit. The file can start at different times and by different staff. When files submitted as part of the record, should the records be submitted separately but each individual chronologically? That's how they're being viewed as a matter of course. Making sure we do it the right way but also clear for all the parties in the cases. The clerk has asked for one chronologically. One total record without referencing a particular file, it would reference many files of what the public record was on a particular property. Permitting and Enforcement files do not have the same file number. The rule from the Council is that anything that is considered has to be part of the record.

Chairman Fowler stated possibly waiving the specific rule that is needed when it becomes a real problem for that particular case and allow in a record that is convenient to the Bureau.

Councilor Morse suggested that once the appeal is accepted the Bureau would have to present a motion the Council to waive its rule for the specific instance. Then the Council can give you specific direction to that specific case, before the record is filed.

Chairman Fowler stated the Bureau could make a motion and the council could waive the rule once it knows what the complexities and issues are in relation to the record.

Mary Ann noted this would give the parties the opportunity to object if they wanted. The chronological rule dictates the mixing.

Councilor Morse stated that the rule related to appeals filed about the permitting decision and the permitting file and the only part of the enforcement file that is required to be given are the pertinent ones that were relied on for making a decision, and those should be put in chronological order.

Chairman Fowler suggested in a pre-hearing conference record issues could be sorted out.

Councilor Dannehy asked about the stream crossing resolution, the wetland BMPs. Mary Ann stated there would be no change.

4. New Business

Councilor Chrisenton reported that the Sub-Committee voted unanimously to recommend that the Council conduct hearings on rule making authority regarding vernal pools and stream crossings. We are not tied to a specific programmatic re-issuance of the general permit. Important to conduct the hearings and regional meetings for education and listening. Looking to council for guidance.

Councilor Morse clarified that a motion was passed to bring to the council a request at a public hearing of the legislative authority program for rule making regarding these issues.

Councilor Chrisenton understands the Bureau can do rule making on their own however the council makes recommendations to the commissioner. The council would be the vehicle in which public hearings would be held to give notice to all the interested players in the state on the subject matter. To occur concurrently for a good open process for the public to be informed. We do have the statutory authority to conduct the meetings

Chairman Fowler called a two minute recess for the sub-committee to meet.

Council to hold public listening sessions/hearings with structured guidelines and proposals around the state by the sub-committee and come back with recommendations to the staff and Council and then prepare for the Commissioner.

Councilor Morse made a motion that the Council approve the recommendation and authorize the sub-committee to continue with planning. Councilor Goodwin seconded the motion and it was voted unanimously.

5. Other Business – None

6. Next Meeting

The next meeting will be November 14, 2006.

7. Adjournment

A motion was made by Councilor Chrisenton, seconded by Councilor Lockwood and unanimously voted to adjourn.

The meeting adjourned at approximately 1:30 p.m.